



Out At Work

A Tool Kit for Workplace Equality

More and more LGBT people are coming out at work. No matter where you work or what you do, you'll feel more secure in your job if you know your rights. For more than three decades, workplace equality has been a top priority for Lambda Legal. We have created this tool kit to give you the information you need to help guide you through your work life.

This kit is organized into three chapters. The first gives an overview of federal and state laws that protect LGBT people and people with HIV from employment discrimination. This area of law is constantly changing, as more states enact nondiscrimination statutes and local governments push ahead against LGBT discrimination and HIV bias. Check our website at www.lambdalegal.org for the most current information about protections available where you live. The second chapter answers many of the common questions that LGBT people and people living with HIV face in the workplace, including: What is a domestic partnership? What are the laws around restroom access for transgender people? How can I request a reasonable accommodation as a person living with HIV? If you think you are being discriminated against at work, you may want to skip to the third chapter — an overview of employment discrimination, and what you can do to protect yourself in the workplace and stand up for your rights.

Use this kit as you look for a new job or explore ways to make your current job better. In addition to the information provided, we have included worksheets to help you identify your specific circumstances and improve your workplace. If you need help fighting workplace discrimination or have any questions about this tool kit, contact Lambda Legal's Help Desk (www.lambdalegal.org/help or call toll-free 866-542-8336).

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CHAPTER 1

LAWS AND LEGAL PROTECTIONS

After many years of public advocacy, strategic litigation and hard work, lesbians, gay men, bisexuals, transgender people, people living with HIV and their allies have achieved a variety of legal protections against workplace discrimination based on sexual orientation, gender identity and HIV status. There are now federal laws in place that protect people living with HIV from discrimination in any workplace with 15 or more employees, but LGBT people have far less sweeping protections, as we will see below.

FEDERAL LAWS

Sexual Orientation and Gender Identity

There is currently no federal law that explicitly forbids sexual orientation and gender identity discrimination in private-sector (nongovernment) jobs. In some cases, LGBT employees may be protected by the federal sexual harassment and antidiscrimination provisions in Title VII of the Civil Rights Act of 1964. Title VII prohibits employment discrimination based on race, color, religion, sex or national origin. Federal law also prohibits

age discrimination against workers over the age of 40, workers with disabilities, pregnant women and those who belong to or refuse to join a labor union.

A growing number of federal courts around the country are recognizing that Title VII's prohibition on workplace sex discrimination bars discrimination against transgender employees. Most courts that have reached this understanding recognize discrimination against transgender employees as a prohibited form of sex stereotyping. Judges are coming to understand the difference between sexual orientation and gender identity and expression, and have been more inclined to interpret Title VII to prohibit discrimination on the basis of gender identity or expression than sexual orientation. Passage of the Employment Non-Discrimination Act (see *The Long Fight for Federal Employment Protections* on page 7) would make gender identity protection explicit and unmistakable in federal law, as well as cover sexual orientation protection.

In contrast to workers in the private sector, all federal employees are protected against sexual orientation discrimination under Executive Order 13087. Federal law also prohibits public employment discrimination based on sex, including sex stereotypes. If you experience discrimination for failure to conform to stereotypes about your gender, you may have a viable claim under federal law.

Public employees enjoy certain constitutional protections against discrimination

because the Equal Protection Clause of the Fourteenth Amendment prohibits the government (and government employers) from purposely discriminating against someone without justification. Public employees have also used the First Amendment's right to free speech to protect the right to come out publicly. And Lambda Legal has successfully used the First Amendment to defend the right of teachers to discuss LGBT issues in the classroom and to uphold the rights of public employees to associate with gay men and lesbians.

HIV

The Americans with Disabilities Act and the Rehabilitation Act of 1973 are the two major federal laws that protect people with disabilities, including people living with HIV. The ADA prohibits discrimination against people because they are disabled or perceived to be disabled in any workplace with at least 15 employees, other than federal agencies. The Rehabilitation Act prohibits disability dis-

crimination by federal agencies or contractors or by employers that receive federal funding. The Rehabilitation Act provides protections similar to those provided by the ADA.

Under the ADA, employers who do not want to hire a person because he or she is disabled cannot refuse to do so unless the individual's disability would truly prohibit him or her from being able to perform the essential functions of the job. In 1998, the U.S. Supreme Court found that a person with asymptomatic HIV was covered by the ADA. This is the view of the vast majority of courts that have considered the issue, although a few have found that particular individuals living with HIV were not disabled. The ADA also outlines specific rules about providing confidentiality and privacy for job applicants and employees with HIV. For instance, applicants do not have to disclose their HIV status to a prospective employer unless it affects their current ability to perform the job. Prior to offering a job, an employer cannot test applicants for HIV. Once an employer makes a

WHAT IS U.S. LAW TODAY?

Employers may not discriminate against employees because of race, color, religion, sex, national origin, pregnancy, disability, age (over 40) or union membership at any stage of the employment relationship — from job advertisements, application reviews and interviews to working conditions, promotions, performance evaluations and references. The law is still developing, but according to

a number of court decisions, LGBT employees are protected from sex discrimination in some circumstances that involve gender-based acts and stereotypes.

The Equal Employment Opportunity Commission was established under the Civil Rights Act of 1964. The EEOC created sexual harassment regulations, that have been used occasionally to protect LGBT people from gender-based sexual harassment.

THE LONG FIGHT FOR FEDERAL EMPLOYMENT PROTECTIONS

In 1974, Representative Bella Abzug of New York introduced the first federal bill to ban sexual orientation discrimination in employment, housing and public accommodations. It did not pass.

Since that time, the Employment Non-Discrimination Act (ENDA), has gone through various incarnations and re-introductions, none of which has become law. In seeking political compromise, past versions have failed to include gender identity or expression protections or have exempted small workplaces, religious organizations and nonprofit organizations like the Boy Scouts. Some versions have discarded the uniform right to equal benefits for equal work.

In an era of greater awareness and empowerment, transgender activists and their allies insist that protections on the basis of gender identity can no longer be ignored or sacrificed in this battle. Notably, in 2006 three states that passed sexual orientation nondiscrimination laws (Illinois, Maine, Washington) also included gender identity. Today, advocates insist that ENDA legislation must forbid employers with 15 or more employees from discriminating on the basis of sexual orientation or gender identity or because they believe that an employee associates with LGBT people.

TIMELINE OF FEDERAL PROTECTIONS

1935

EMPLOYMENT DISCRIMINATION BASED ON UNION MEMBERSHIP BANNED

1963

SEX-BASED WAGE DISCRIMINATION BANNED

1964

EMPLOYMENT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX AND NATIONAL ORIGIN BANNED

1967

EMPLOYMENT DISCRIMINATION AGAINST PEOPLE AGE 40 AND OVER BANNED

1973

EMPLOYMENT DISCRIMINATION AGAINST FEDERAL EMPLOYEES WITH DISABILITIES BANNED

1974

BILL TO BAN SEXUAL ORIENTATION DISCRIMINATION IN EMPLOYMENT IS INTRODUCED BUT NOT PASSED

1981

EMPLOYMENT DISCRIMINATION AGAINST PREGNANT WOMEN BANNED

1986

EMPLOYMENT PROTECTIONS FOR IMMIGRANTS PASSED

1991

EMPLOYMENT DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES BANNED

1996

ENDA MOVES TO THE SENATE FLOOR FOR A VOTE BUT DOES NOT PASS

conditional offer (conditioned on passing a physical exam, for example), employers can test a prospective employee for HIV, but only if the test is given uniformly to all prospects.

An employer can ask about a prospective employee's health, but can't use the answers to screen out people with disabilities unless the screening is based on inability to perform job-related functions. After an employee is hired, an employer can usually only ask questions about disability or health if the inquiry is "job-related and consistent with business necessity." All information and records obtained about an applicant's or employee's medical condition must be kept confidential by the employer.

Another useful federal safeguard for employees living with HIV is the right to reasonable accommodations. Depending on the circumstances, an employer's reasonable accommodations could include approving a flexible schedule, making the office wheelchair accessible or agreeing to other adjustments that allow a disabled employee,

including one with HIV, to perform the essential functions of a job.

As required by the ADA, what accommodation is "reasonable" and must be provided depends on the specific job, the employee's medical needs and the employer's size. An employer has the right to ask for information to make sure the employee is disabled and in need of reasonable accommodations and may not have to provide an accommodation that is too expensive or administratively difficult.

STATE AND LOCAL LAWS

A number of cities, counties and states have passed laws that can help protect LGBT people and people living with HIV. Unlike the federal ENDA, which would specifically address employment discrimination, many of the state, city and county laws encompass a wider range of protections, including housing and public accommodations. (Public accommodations are private entities who own, lease or operate facilities such as restaurants, retail stores, private

AT WILL EMPLOYMENT

In most states, most workers are employed "at will." Generally, they can be fired for any reason, with or without notice, except for a discriminatory or illegal reason (i.e., race or sex) as defined by federal, state or local law. Legal avenues for at will employees are limited.

If you do not have an employment contract and you don't

belong to a union, you are most likely an employee at will. An employment contract or employee handbook may include specific information about how to make a work-related complaint, but promises made in an employee handbook are not always enforceable. On the other hand, employment protections that your union obtains in a collective bargaining agreement are, by nature, enforceable.

WHAT IS A PUBLIC EMPLOYEE?

A public employee is a person who is employed by a municipal, county, state or federal agency or state college or university. On the whole, LGBT people who are public employees have broader

protections than those working in the private sector. Indeed, with the exception of the military and possibly intelligence positions, it is widely recognized that sexual orientation discrimination in a government workplace lacks a rational basis and is unconstitutional.

schools, doctors' offices, homeless shelters and day care centers, among others.)

In 1982, Wisconsin was the first state to outlaw employment discrimination based on sexual orientation. Nine years later, the next state — Hawai'i — enacted this protection, and now more than one-third of all states protect employees from sexual orientation discrimination. Some states also prohibit employment discrimination based on gender identity or expression. To find out if your state has laws prohibiting discrimination based on sexual orientation and gender identity or expression, visit www.lambdalegal.org for the most up-to-date information.

While federal discrimination law applies only to employers with 15 or more employees, state laws generally cover smaller employers. Many of these state provisions cover perceived sexual orientation and gender identity, so that people discriminated against because they are perceived to be gay or transgender can state a claim, even if they are not gay or transgender or not out. There also may be state or local laws that protect political activity or expression, including coming out. Colorado and North Dakota also forbid employers from discriminating against employees based on their lawful actions

outside of work, so this can cover LGBT employees, as well. Finally, some states and municipalities have prohibitions against marital status discrimination that may cover employees who are trying to obtain recognition of their same-sex relationships.

State nondiscrimination laws ban discrimination in hiring, promotion and firing and expressly prohibit harassment based on sexual orientation (and sometimes gender identity and expression), but they may not require that employers provide equal benefits to their employees. A number of local government entities have tried to address that harm by making equal health benefits available to domestic partners of public employees. In 1997, the city and county of San Francisco became the first jurisdiction in the United States to enact an Equal Benefits Ordinance that requires city contractors to provide the same benefits to employees who have domestic partners as they provide to employees who are married. According to the Human Rights Campaign, as of March 2006, one state (California) and 12 cities and counties had passed an equal benefits law.

Many states prohibit disability discrimination, and some states expressly prohibit discrimination against anyone with HIV. In

addition, some cities offer specific protections for workers with HIV. In some cases, these laws provide greater protection for people living with HIV than the federal protections provided by the Americans with Disabilities Act and Rehabilitation Act.

All state laws have some exceptions. For example, many religiously affiliated employers are exempt from laws that prohibit discrimination against LGBT people although publicly funded religious organizations are sometimes held to a higher standard by the courts. Some state laws also include exemptions for domestic workers and various categories of nonprofit or tax-exempt organizations (i.e., social or fraternal clubs, charitable organizations operated by political organizations and youth service organizations).

While state laws prohibiting employment discrimination only cover some LGBT people, protections granted by large cities and counties widen the scope. Close to half of all people in the United States live in an area that bars employment discrimination based on sexual orientation. According to the Human Rights Campaign's annual "State of the Workplace" report from 2006, 162 counties and cities had outlawed sexual orientation discrimination in public and private employment and 82 counties and cities had outlawed discrimination based on gender identity or expression in the workplace. According to the National Center for Transgender Equality, more than 30 percent of the U.S. population lives in an area that bars employment discrimination based on gender identity or expression.

OTHER LAWS THAT MAY PROTECT YOU

If you live in an area without explicit legal rights for LGBT employees or you are not a

public employee, there may be ways you can protect yourself or respond to unfair treatment in the workplace by using other laws in place. For example, if your employer has a contract or collective bargaining agreement protecting you from discrimination for sexual orientation or gender identity and expression, you may have legal protections under labor contract law.

In addition, you may have other avenues of legal recourse because some forms of discrimination may violate state codes of professional conduct or ethics. Certain tort and common law theories, such as infliction of emotional distress, defamation, breach of the covenant of good faith and fair dealing, wrongful termination in violation of public policy and interference with contract or prospective business advantage, may also apply. An employee suffering harassment on the job may also be able to seek redress for emotional injuries through workers' compensation. And an employee who is fired after colleagues see her with her same-sex partner outside of work may be able to sue for invasion of privacy. Some courts have also applied other state nondiscrimination laws, including disability protections, to transgender employees as well. In general, remember that the laws — particularly in the field of transgender rights — are evolving, and employers are not always following advances in the courts.

Lambda Legal secures legal precedents and interpretations of the law that improve the working lives of LGBT people, people living with HIV and their allies. We also help people understand what these laws mean in everyday life. The following chapters describe some practical and proactive actions that individual employees and groups can take to create workplaces free from discrimination.



CHAPTER 2

WORKPLACE ISSUES FOR LGBT PEOPLE AND PEOPLE WITH HIV

This chapter covers a broad range of workplace issues that lesbians, gay men, bisexuals, transgender people and people living with HIV frequently encounter in the workplace. We encourage you to use these questions and answers in the way that serves you best — feel free to read through them from beginning to end or go directly to the questions that concern you most. If you need further help, or have a question that you don't see listed here, contact Lambda Legal's Help Desk (www.lambdalegal.org/help or toll-free 866-542-8336) or check out our Resources Guide at the end of this tool kit.

THE BASICS

Across the country, LGBT people balance their need to work with their right to honor and express their sexual orientation or gender identity. More than 80 percent of Americans believe that sexual orientation discrimination in the workplace is wrong and 61 percent of Americans believe that transgender people should be protected from discrimination by law. But Lambda Legal's 2005 Workplace Fairness Survey revealed that a large number of lesbian and gay employees still face dis-

crimination. Thirty-nine percent of survey respondents reported experiencing some form of discrimination or harassment in the workplace because of their sexual orientation during the past five years. Clearly, more work is needed before people feel comfortable being out at work.

Why are employee nondiscrimination policies important?

Employee nondiscrimination policies are a primary way to improve workplace conditions for all LGBT people and people living with HIV. Employers often have nondiscrimination policies that cover characteristics such as race, age and religion. Adding sexual orientation, gender identity or expression and HIV status to this policy is a vital step toward creating a safe, respectful workplace. If you work in a jurisdiction where there are no laws that explicitly protect you against sexual orientation or gender identity discrimination, an employer's policy may be the only thing you can point to in the event of anti-LGBT discrimination.

In recent years, there has been a positive trend among employers towards antidiscrimination policies that prohibit discrimination based on sexual orientation. As of June 2006, the Human Rights Campaign found in its annual State of the Workplace Report that 86 percent of Fortune 500 companies prohibit discrimination based on sexual orienta-

tion. A much smaller number of company policies include gender identity, although that number is rapidly increasing. LGBT activists, allies, employee groups and unions should work together to draft policies, apply pressure and form alliances to make sure an inclusive policy is put in place and enforced.

What constitutes a strong nondiscrimination policy?

There is no standard language for employee nondiscrimination policies. Different policies can be interpreted to cover (or exclude) various forms of discrimination — and, even more importantly, policies often spell out how an employer will respond in the event of discrimination. When examining an employer's nondiscrimination policy, or advocating for the implementation of a new policy, keep in mind that a strong nondiscrimination policy should include the following:

- Clear language that discrimination and harassment based on sexual orientation, gender identity or expression and HIV status will not be tolerated
- Specifics about prohibited behavior
- A description of the penalties for violating the policy
- A clear outline or grievance procedure for an employee who has experienced or witnessed discrimination
- A declaration of the employer's commitment to prompt investigation of complaints of discrimination
- A promise of protection against retaliation
- A commitment by the employer to be legally bound by its policy

When developing inclusive nondiscrimination or equal employment opportunity policies, you and your employers should be attentive to all aspects and stages of employment, from recruitment to termination.

What constitutes effective workplace diversity training?

Workplace diversity trainings provide an opportunity to educate staff about the issues affecting lesbian, gay, bisexual and transgender people and people with HIV. These programs are another way, besides implementing an inclusive nondiscrimination policy, that employers can demonstrate their commitment to fostering diversity and creating a respectful work environment. An effective diversity training will examine hidden as well as overt bias and give people conflict-resolution skills and tips about becoming workplace allies. Attendees should learn how they can make the workplace a more welcoming place for their LGBT co-workers and those living with HIV. Such programs should also include training to allay fears about HIV transmission, educate about HIV prevention and provide resources for employees with HIV or those with family members with HIV. Ideally, the company's diversity trainers will be well versed in sexual orientation and gender identity issues. Check their references and talk to people at other workplaces to see if their workshops are successful and practical.

What is an LGBT employee resource group?

LGBT employee resource groups (ERGs) can start out as lunchtime meetings or listservs for interested workers and develop into powerful agents for change within the workplace.

Often ERGs work to create company nondiscrimination policies or to obtain domestic partner benefits. They may also provide resources and support for LGBT employees or information for management. Some ERGs focus on advocacy and workplace activism, while others primarily provide social networking and support.

Many LGBT employee resource groups — including the LEAGUE at AT&T, the nation's oldest LGBT employee resource group — have implemented safe space programs. Usually, safe space programs are

designed to let all workers know that discrimination will not be tolerated and that their workplace respects and values its LGBT employees. One feature of the safe space may be visual cues such as magnets, stickers or



MATTER OF MATTHEW CUSICK AND CIRQUE DU SOLEIL

"When I was fired by Cirque du Soleil, it was the worst day of my life. This kind of discrimination tears people's dreams and careers apart. While other people in all sorts of professions will still face HIV discrimination, after today they will have a powerful tool with the settlement we reached."

— MATTHEW CUSICK

In this landmark HIV discrimination case, Lambda Legal represented Matthew Cusick, who was fired from his job as an acrobat in Cirque du Soleil because he has HIV. Cirque hired Cusick to train for its popular Las Vegas-based show, *Mystere*. Cusick spent months training and cleared exams by Cirque's doctors, who said he was a healthy athlete, fully capable of performing. But shortly before he was scheduled to start, Cirque told Cusick that because he has HIV, the company would not continue to employ him. Cusick called Lambda Legal's Help Desk. We filed a federal discrimination complaint charging that Cirque had no reason to fire Cusick, since he does not pose a health risk or safety threat to himself or anyone else. Following a determination by the federal Equal Employment Opportunity Commission that Cirque had likely engaged in illegal discrimination,

Lambda Legal reached a settlement with the company — the largest settlement ever for an HIV-discrimination complaint settled with the EEOC. Cirque paid a record \$600,000 to end the federal disability complaint, initiated companywide antidiscrimination training and altered its employment policies worldwide concerning people living with HIV.

LAMBDA LEGAL'S IMPACT

This is one of many examples of Lambda Legal's vigorous efforts to ensure that people with HIV and LGBT people are treated fairly at work. The case upholds the principles of the Americans with Disabilities Act. It also shows that it is the responsibility of employers to be up-to-date on the facts of HIV and treat people with HIV as they would treat other employees — and not rely on myths, fears and stereotypes about the disease.

posters to help LGBT employees feel supported and safe to be out on the job. Even without a formal safe space program, many ERGs are active in creating a welcoming environment for LGBT people.

LGBT professional associations serve a similar networking purpose for LGBT people who may not work in large or centralized workplaces. These associations may be initiated through an LGBT caucus or committee of a larger professional association. In addition to providing support and networking for LGBT professionals, LGBT professional associations may seek to expand the profession's understanding of LGBT issues and elevate their advocacy on behalf of LGBT civil rights.

LGBT people who work alone or in small workplaces can find support in LGBT groups or organizations that are not specifically tied to their workplace or profession. The state groups affiliated with Equality Federation (www.equalityfederation.org) or a local LGBT community center (www.lgbtcenters.org) may be a good place to look for support. LGBT people with their own businesses may also want to research whether their city has an LGBT business association or chamber of commerce.

COMING OUT

How should I decide whether to come out at work?

If you've been working at your job for a while and you're thinking about coming out to your co-workers or supervisor, you have the advantage of being familiar with the culture at work. In general, it will be easier to be out if you have a support system in place. Talk it over with family, friends or a supportive co-worker. If your company's nondiscrimination

policy includes sexual orientation or gender identity, it may be safer to come out. Pay attention to your workplace culture. Are other people out? How are they treated? Are you on friendly terms with your co-workers? Depending on your comfort level and the potential repercussions in your workplace, it may be better to come out to only a few people at first.

The practical reality remains that coming out at work may be quite difficult and even dangerous for people living in states and cities without protections against discrimination. This may be especially true for workers in small or hostile workplaces or contractors, freelancers or professionals trying to build their own business or client base. You should evaluate your own situation or seek outside resources to help you make this decision.

Why is it important to come out at work?

Many people see coming out as a positive expression of identity and come out just by being open about their lives in daily conversation, as opposed to making an announcement. For some people, bringing a same-sex date or partner to the company picnic or holiday party — or even being invited to a co-worker's home or party — are important milestones, as hard won as domestic partner benefits or nondiscrimination policies. If you are a transgender person, you may have to deal with issues that make it difficult to maintain your privacy (see pages 19-22), but you should have the right to decide whether or when to share personal information about yourself.

Coming out also has a social dimension that goes beyond the individual. By coming out, you make it easier for co-workers to do the same — or for co-workers with LGBT

family members or friends to come out to you. Many people don't realize how many LGBT people they know because they presume that their co-workers are heterosexual and not transgender. Coming out can also help change people's attitudes. Several studies have shown that when people personally know someone who is gay or lesbian, they are more likely to support LGBT rights. A 2006 report from the Hunter College Center for Sexuality and Public Policy found that heterosexual Americans who have contact with gays and lesbians are 13 percent more likely to support legal recognition of same-sex couples (either through marriage or civil unions). Often employers first have to acknowledge that they have LGBT employees before they become receptive to including sexual orientation and gender identity in their nondiscrimination policy or providing domestic partner benefits.

Should I come out on my job search?

Coming out is always a private decision. You should determine how important it is to you to be out at work and whether or not you will be out on your application, client pitch, contract bid or during your interview. Listing an LGBT affiliation (with relevant applicable skills and accomplishments) on your resume or cover letter may be a way to find out early in the process whether a prospective employer is likely to treat you fairly.

If you are transgender, whether to be out in your job search may be of particular concern to you. For example, you may be unsure how to list your sex or a former name on job application forms, since such disclosure may make you vulnerable to discrimination. There is not a lot of case law in this area, but at least one jurisdiction (Washington, D.C.) has published guidelines stating that it is not fraudulent for trans-

gender people to list their gender identity and consistently used name on job applications. Lambda Legal encourages you to describe yourself in ways that are true to your gender identity when you feel comfortable doing so.

If you fear your otherwise strong application won't get a second look if you're out but you still want to pursue the job, consider organizing your resume to reflect the skills you would bring to a position without listing certain details. For instance, instead of including a long-standing membership in a local LGBT group, some people list additional accomplishments or related skills (i.e., bookkeeper, grant writer, top fundraiser, founding member) without giving the name of the organization. But you should be prepared to answer questions about anything contained in your resume.

Unfortunately, LGBT people and people with HIV may experience employment discrimination prior to getting a job because their sexual orientation, gender identity or HIV status can prevent them from being offered jobs they are qualified for. This is usually difficult to prove, as the hiring process can be subjective and even idiosyncratic. If an employer demonstrates a pattern of hiring only certain kinds of people and never hiring others, the discrimination becomes more obvious. See our discussion in Chapter 1 about the laws and other protections that may help you challenge this type of discrimination.

What can an employer ask me in an interview?

The interview questions below are illegal:

- Are you in good health?
- What prescription drugs are you currently taking?

- Have you ever been treated for mental health problems?
- How many days were you sick last year?
- Do you have HIV or AIDS?
- Do you have a disability?

Depending on the laws in your area, an employer may be free to ask questions about your sexual orientation, marital status or whether you have children. Most employers won't ask for this information since it raises concerns about discrimination if the applicant is not offered a job. Although they can't ask whether you have a disability or require that you take a medical exam prior to a job offer, they can ask about your ability to perform the essential functions of the job and base their decisions on your answers.

DOMESTIC PARTNERSHIP BENEFITS

Thousands of private and public employers are now offering benefits such as health insurance, family leave and survivor benefits to the domestic partners of LGBT employees. In a small number of states, some employers are required to do so because of state or local laws or policies recognizing marriages, civil unions or domestic partnerships for same-sex couples. Other employers are offering such benefits voluntarily because they recognize that it is a good business decision.

The section below provides helpful information to people who work for employers who are not required by statute or ordinance to recognize marriages, civil unions or domestic partnerships, or for situations where bringing a legal action is not the best strategy. If you live in a state or locality where there is such a law, please consult Lambda Legal's website, Help Desk or an attorney if you need more information about securing benefits at work.

What is a domestic partnership?

A domestic partnership is generally defined as two people who share a primary residence, are financially and emotionally interdependent and have an intimate relationship, including a commitment to caring for each other's needs. The rights and obligations of domestic partnership vary considerably from jurisdiction to jurisdiction. Nevertheless, for many same-sex couples in a committed relationship in the United States, it is the only form of relationship recognition they have.

Federal laws relating to employee benefits are often not friendly to domestic partnerships. For example, the federal Family and Medical Leave Act, which allows employees in large companies to take paid or unpaid sick leave to care for a partner (or child or parent) with a serious medical condition for up to 12 weeks out of a year, does not apply to same-sex partners or to their legal children. The responsibility is left to employers to provide fair and parallel coverage for same-sex couples and their families.

Is it burdensome for employers to offer domestic partner benefits?

In most jurisdictions, employers are not required to offer domestic partner benefits, despite the fact that denying those benefits constitutes a denial of equal pay for equal work. Thousands of private employers have taken the lead and are now offering benefits to domestic partners — and they have not faced administrative problems, fraud issues or excessive costs. Employers that demonstrate their commitment to equality in benefits have an advantage in attracting and retaining qualified employees, consumers, shareholders and clients — and employees who can be open about their lives and have security for their families will be more productive.

How can I advocate with my employer for domestic partner benefits?

Every employer is different, and there is no risk-free or guaranteed formula for securing domestic partner benefits. However you choose to proceed, you will have a greater chance of success if you tailor your plan to your specific work situation and resources. It is good to begin with your employer's nondiscrimination policy. If the policy includes sexual orientation or marital status, you can argue that the lack of domestic partner benefits contradicts this policy. Without an inclusive nondiscrimination policy, it may be difficult to advocate for benefits without fear of discrimination, so you may want to fight for an inclusive nondiscrimination policy first.

Here are a few tips to get you started:

- Talk to your co-workers to find out what level of need and support there is for domestic partner benefits.
- Identify who will ultimately review your proposal and anyone who may be an ally in this process (i.e., human resources officers, union representatives, LGBT employee resource groups).
- Develop a list of the benefits your employer offers married couples and prioritize them by need and likelihood. A “hard benefit” like health insurance may be your most pressing need, but “soft benefits” such as sick leave or bereavement leave may appear less threatening to employers because they do not involve changes to insurance policies.
- Research and contact other employers who provide domestic partner benefits to gain insight into the process. Consult resources such as the National Gay and Lesbian Task Force's *The Domestic Partnership Organizing Manual for Employee Benefits* and *Pride at Work's*

Seven Steps to Adding DP Benefits to Your Union Contract.

- Draft a proposal outlining the who, what, when, where, why and how of domestic partner benefits at your company. Include a general description of what domestic partner benefits are and sample copies of policies from comparable employers or local governments. Provide letters of support from other employers and allies.
- Request a meeting with management to discuss domestic partner benefits. Be prepared to educate your employer about the inequity of policies that exclude domestic partners. Stress that employers that offer domestic partner benefits have an advantage in attracting and retaining qualified employees. You may also want to reference statutory laws that ban discrimination based on marital status and/or sexual orientation.

Will health insurance companies honor domestic partnerships for coverage?

In most cases, employers who want to provide domestic partner coverage that includes health insurance have little difficulty finding an insurer. A domestic partnership affidavit or eligibility standard may help address any concerns an insurance provider may raise about fraudulent claims. If an employee must meet a basic eligibility standard and declare (under penalty of perjury) that he or she is in an “intimate and committed relationship of mutual caring” with his or her domestic partner, the possibility of fraud shouldn't be any higher than it would be for married couples.

If your employer is willing to provide domestic partner benefits but then decides to exclude health coverage because its existing group plan doesn't cover domestic partners, you may be able to persuade your human



BRINKMAN V. MIAMI UNIVERSITY

“What’s at stake for us here is simply basic for anyone: the legal and social recognition of the equality of our partnership, and our family, with heterosexual couples and families.”

— YVONNE KELLER

When a lawsuit by the antigay Alliance Defense Fund and ultraconservative Ohio legislator Thomas Brinkman threatened Miami University’s domestic partner benefits program, Lambda Legal intervened on behalf of Professors Yvonne Keller and Jean Lynch — two university professors whose families stood to lose their medical coverage if the ADF prevailed. The ADF lawsuit claimed that Miami University’s domestic partner benefits violate Ohio’s constitutional amendment, that limits marriage to a man and a woman. Lambda Legal argued that Ohio’s constitutional amendment does not apply to the university because it concerns only marriage and does not address the legality of domestic part-

nership benefits. Lambda Legal also moved to dismiss the case on the ground that Brinkman lacked legal standing to sue, since providing health care to same-sex couples caused him no injury. In November 2006, the court accepted Lambda Legal’s argument and dismissed the ADF lawsuit. The ADF has appealed.

LAMBDA LEGAL’S IMPACT

The court’s decision frees our plaintiffs from becoming pawns in a politically motivated lawsuit by right-wing extremists. Lambda Legal is taking a stand against antigay forces around the country, defending ground we’ve already gained to protect our relationships and our benefits.

resources managers to let you negotiate directly with the insurance company. In a situation like this, you may have to ask your employer to pay for an individual policy for a domestic partner. This arrangement would require you to contribute the same copayment amount that your employer would have required if you were able to purchase the coverage available for a spouse or dependent under the group plan.

After all of your hard work to obtain these benefits, they may still be unequal, through no fault of your employer. The IRS currently does not treat domestic partners as spouses for tax purposes. This means that unless your domestic partner meets the standards of dependency as defined by the IRS (residency in the employee’s household, dependency on the employee for at least half of his or her support, and yearly earnings that are less than

the cap amount stated in IRS guidelines), the domestic partner coverage offered by your employer is taxable income. You should factor this substantial tax burden into any budget you and your partner create.

How do I advocate with my employer to respect my marriage to my same-sex partner?

Whether you take your vows in Massachusetts, Canada or somewhere else, you are in a unique position to convince your employer to respect your marriage. While there is no guarantee that you and your partner will be granted the same rights and benefits that different-sex married couples receive, you can and should encourage your employer to do the right thing and treat all married couples equally.

You can use the same strategies to advocate for recognition of marriage that you used to obtain equal benefits for domestic partners, but you may want to incorporate the following arguments that are specific to civil marriages.

- You are legally married and can (and in some situations are obligated to) describe yourself that way.
- Employers, particularly corporations, have led the way for other benefits and employment protections for LGBT people — in many cases offering domestic partner benefits before local and state governments began enacting domestic partner registries. As with domestic partnership, employers can take the lead in recognizing marriage for same-sex partners.
- If your employer does international business in the country where your marriage license was issued, it is good public relations for your employer to show respect for that country's laws.
- If your marriage license was issued by the Commonwealth of Massachusetts, and

your employer does business in that state, justice and consistency mandate respect for all marriages conducted by that state.

GENDER IDENTITY AND EXPRESSION

Although the path has not been easy for transgender people in the workplace, there are indications that the climate is improving. Unions and other advocates are beginning to see transgender rights as a primary battle in the fight for workplace equality. Additionally, more and more people are learning about gender identity and expression issues — sometimes from the transgender people who work with them. According to the Human Rights Campaign, as of March 2007 more than 260 private corporations included written nondiscrimination policies covering gender identity and expression in their employee handbooks. Colleges and universities are also leaders on this issue, with more than 80 institutions across the country providing this form of protection.

Despite these gains, transgender people still frequently encounter workplace problems related to discrimination, harassment, insensitivity, transitioning, health insurance, restroom access and dress codes. Transgender people in regions without statutory workplace protections and those who work in small businesses or companies are the most likely to feel isolated and inhibited.

Transgender people are on the front lines of battles that also affect many other people. As they challenge the rigid stereotypes associated with “male” and “female” characteristics and behavior, they are helping to create a society that is open to a wider spectrum of gender expression, including gender-nonconforming or androgynous gay, lesbian, bisexual, questioning and heterosexual people.

Should I transition on the job?

It is in the best interest of employers to support employees as they transition by maintaining open communication, respecting privacy, informing and educating staff and promoting the usage of the preferred name and pronoun of the transitioning employee. If you plan to transition on the job, you should review your employer's nondiscrimination policy and your state's and city's laws about discrimination based on gender expression and identity. If your workplace or region does not explicitly protect you, you may want to consult an attorney, as many courts have found protection for transgender employees under sex discrimination laws. Also, bear in mind that if you quit your job to transition and then start over elsewhere, your job search may be complicated, especially when it comes to providing a complete work history or personal references.

What are some guidelines to keep in mind about transitioning on the job?

Before you transition and throughout the process, gather and maintain connections with allies such as family, friends, transgender support groups, a therapist and/or an LGBT employee resource group to help you during the transition. You may want to find out if your therapist, doctor or health professional is willing to communicate about your transition to the proper people at your workplace and give them permission to do so.

Acquaint yourself with the process for legally changing your name and other identification documents such as your Driver's License or state ID, and notify your employer if you legally change your name. Many organizations, including the Sylvia Rivera Law Project (www.srlp.org), have a number of resources online to help guide you through

this process. Every state except three (Tennessee, Ohio and Idaho, as of this printing) allows transgender people to amend their birth certificates to reflect a change in gender, but the process varies from state to state and may require proof of sex reassignment surgery and/or a court order.

It is best to talk to your employer at least three months before you plan to transition. Take into account the general climate of your workplace when determining whom you will come out to first (i.e., human resources, employee assistance program representative, union shop steward, union membership assistance program representative, supervisor or corporate diversity specialist). Be sure to gauge the level of confidentiality you can expect (and request) in each situation. It may be helpful to provide your employer with a report and timeline about your transition process, but be sure to mark this information as "personal and confidential." Obtain copies of your performance evaluations and other materials that your company has on file before you transition, just in case you face discrimination down the line. It will also be helpful to keep a record of your transition, including any workplace discrimination you experience, in a journal that you keep at home.

The more support your employer is willing to show for your transition, the faster your co-workers will adjust. You should inform co-workers about your transition in a thoughtful and professional way, consistent with your comfort and any work rules (i.e., hold a meeting or send a personal memo accompanied by a letter from your employer). You may have to educate people by answering their questions or providing them with informational materials. Request that your employer consult a transgender workplace consultant or conduct workplace sensitivity training, if possible.



LOPEZ V. RIVER OAKS

“I was shocked when I received the call from human resources taking away the job they’d offered me — it felt as if they’d said to me ‘you’re a monster; we don’t want you here.’”

— IZZA LOPEZ

In September 2005, Izza Lopez, a 26-year-old transgender woman, accepted a job as a scheduler with River Oaks Imaging and Diagnostic, a medical imaging company in Houston. After resigning from her position with her then-current employer, Lopez received a call from River Oaks rescinding the job offer because of her “misrepresentation” of herself as a woman. Lopez was unable to get her previous job back and was without employment for several months. Lambda Legal has filed a federal discrimination lawsuit on Lopez’s behalf. The case is pending.

LAMBDA LEGAL’S IMPACT

This case gives the Southern District of Texas the opportunity to follow in the footsteps of other federal courts around the country in recognizing that transgender employees are protected by Title VII, the federal law banning sex discrimination in the workplace. A victory will clarify and advance workplace rights for transgender people while educating employers that discrimination against transgender employees is not permissible under federal law.

Can I receive health care coverage for my transition?

Employee health insurance plans often explicitly exclude medical procedures that are essential to many transgender people, such as hormone replacement therapy or sex reassignment surgery. Employers who self-insure (pay their employees’ medical claims directly rather than using outside insurance providers) are more likely to extend these health insurance benefits. As part of your advocacy — or your union’s or LGBT

employee resource group’s advocacy — you may also ask employers to provide health and disability leave for transitioning and maintenance procedures and therapies.

What does the law require about restroom access for transgender people?

The law requires employers to provide a safe and convenient restroom for all employees. There may be laws at the state and local level that will affect how your employer handles the question of restroom access for trans-

gender or transitioning employees. For instance, a state law or local ordinance may require that restrooms be accessible to people based on their gender identity. To maintain consistency and respect throughout and after the transition process, transgender employees should be allowed to use the restroom that corresponds with their gender identity. Some transgender employees might prefer to use single-toilet unisex bathrooms with doors that lock.

Transgender employees should discuss restroom access with their employer before it becomes a major issue in order to address any concerns they may have. If co-workers complain about sharing bathrooms, employers can opt to make special arrangements for the complaining employee rather than for the transgender employee. In 2002, a federal appellate court upheld the right of an employer to allow a transgender staff person to use gender-identity-appropriate restrooms despite complaints from another staff person.

What are my rights when it comes to following my employer's sex-specific dress code?

Some legal decisions state that employers have the right to implement and enforce dress codes with different requirements for male and female employees. However, numerous courts have held that sex-specific dress codes must not place significantly unequal burdens on men and women. To the extent that it is comfortable, transgender employees should dress in accordance with the dress code requirements applicable to their gender identity.

Crossdressers — those who wear clothing associated with another sex but who do not undergo gender transition — face a related

set of issues. If you decide to come out as a crossdresser to your co-workers but do not intend to crossdress at work, you should be aware that confidentiality cannot be guaranteed. If you do crossdress at work, you also may have to avoid clothing that would be considered inappropriate under the sex-specific dress codes that your employer is enforcing. One federal court has gone so far as upholding the termination of an employee who crossdressed off the job. Even workplace nondiscrimination policies that include gender identity and expression might not protect you against such unfair treatment.

HIV

In the third decade of the epidemic, HIV continues to have a devastating impact on our communities. Over 1 million people nationwide are living with HIV today, and there are approximately 40,000 new infections each year. Among people living with HIV in the United States, 45 percent are men who have had sex with men. The epidemic is having a particularly serious impact on black gay men.

Health care and medical alternatives for people with HIV have improved dramatically since the first years of the epidemic, which means that more and more people with HIV are in the workforce or planning to enter it. Employers are bound by federal laws, and in some cases, state and city laws, to work with people with HIV to ensure job security, privacy, reasonable accommodations and a workplace that is free of harassment and discomfort (see pages 6-8). But many employers do not understand the laws protecting people with HIV. In clear violation of these laws, companies often terminate or refuse to hire employees with HIV because they erroneously perceive them as a risk to co-workers, the public or themselves.

You should familiarize yourself with your rights under the Americans with Disabilities Act (ADA) (www.ada.gov and www.eeoc.gov/types/ada.html), the Rehabilitation Act of 1973 (www.national-rehab.org) and find out about any applicable state and city laws in your area. Businesses can learn more by consulting the Centers for Disease Control and Prevention's *Business Responds to AIDS* and *Labor Responds to AIDS* tool kits, the Society for Human Resources Management's *National AIDS Fund Tool Kit* and the website www.thebody.com.

People with HIV work in a variety of jobs demanding physical, mental and emotional stamina. Some workers with HIV require reasonable accommodations in order to perform a job; others, with proper diagnosis and medications, may never experience illness that affects their work. HIV infection does not affect each person in all the same ways. Your HIV status alone should not be used to dictate what you can — or cannot — do. Your ability to work is controlled by your specific condition, not by your HIV status.

Should I disclose my HIV status to my employer and/or co-workers?

People living with HIV may not be able to safely disclose their HIV status in the workplace given the persistence of HIV-related stigma and discrimination. The American Bar Association and the Centers for Disease Control and Prevention both have recommended that individuals who test positive for HIV receive legal advice about the importance of maintaining their confidentiality, which helps an individual avoid becoming the victim of discrimination. Revealing your confidential information at work may subject you to discrimination, and remedies for that discrimination may not be available. For these reasons, people with HIV

should carefully consider the risk of discrimination or retaliation before revealing their HIV status to others in their workplace or community.

If your HIV status is known to your employer, the ADA generally requires employers to keep HIV-related information confidential and prohibits employers from discriminating against people with HIV. However, for disclosures made outside of the protections of the ADA (i.e., disclosure to a co-worker or disclosure in a workplace with fewer than 15 employees), there may not be a legal obligation for your employer or other employees to keep all information about your HIV status confidential, and the ADA may not protect against discriminatory conduct. Therefore, you should be careful about whom you discuss your HIV status with and keep in mind that, although there are legal protections against employment discrimination based on HIV status, there are some gaps in what those laws cover, and discrimination may be hard to prove.

How do I request a reasonable accommodation as a person living with HIV?

Approach your immediate supervisor first. You may also need to enlist the support of your human resources department or a union representative. Keep in mind that not everyone you speak to may be held legally accountable to protect your confidentiality. If your employer asks for proof that you are disabled, you may want to consult an attorney before making a disclosure about your HIV status. An employer might consider it sufficient for your doctor to explain in writing that you have a “chronic condition” that causes you to need the accommodation you are requesting, without specifying what that condition is. Other employers may require you to provide a medical diagnosis.

Put your request in writing, and use the word “accommodation.” Always emphasize how productive the accommodation(s) will make you. Be realistic about your request. Your employer’s obligation to accommodate you will depend on the particular facts of your situation, such as the size and type of

business, the job at issue and the type of accommodation you need. Common accommodations for people with HIV include time off for doctor’s visits, flexible work schedules for employees who experience fatigue at certain times of day or access to a refrigerator to store medications. Remind your employer



SAAVEDRA V. NODAK ENTERPRISES

“I knew right away that what Nodak did to me was wrong. No one should have to endure the kind of humiliation and disrespect I suffered just because of HIV. I’m glad I fought back.”

— JOEY SAAVEDRA

Joey Saavedra, a 45-year-old HIV-positive man, was a skilled auto-glass installer who had worked in the industry for nearly 27 years when he was fired from his job because he has HIV. During an interview for a job with Nodak Enterprises for a position installing auto glass, Saavedra disclosed his HIV status to the company’s district manager. After he was hired, Saavedra also told his direct supervisor. Three months later, after news of his HIV status made its way up to the company’s leadership, Saavedra was fired — even though he did his job well and his direct supervisor wanted to keep him on staff. Lambda Legal filed a federal lawsuit in May 2004 on behalf of Saavedra, saying Nodak violated the Americans with Disabilities Act, which prohibits discrimination against qualified people with disabilities. In addi-

tion to our litigation, Lambda Legal launched a national public education campaign against the company, highlighting HIV discrimination in the workplace. Within months of launching the campaign, Lambda Legal reached a settlement agreement with Nodak Enterprises.

LAMBDA LEGAL’S IMPACT

In the settlement, Nodak Enterprises agreed to adopt a nondiscrimination policy, conduct extensive training on HIV issues for its employees as well as pay an undisclosed amount of money to Saavedra. This settlement not only affects the 42 stores that Nodak operates across seven southern states, but it sends a message to employers across the country that HIV discrimination will not be tolerated.

to address any backlash you receive from co-workers who feel you are getting “special treatment.”

Bear in mind that you will not be in a good position to negotiate if you request reasonable accommodations retroactively. For example, you will be in a better position if you let your employer know that you will need flexibility about your arrival time, rather than wait until you are approached by your supervisor for arriving late to work every day for a month, and then saying, “You need to let me come in late because I have a condition that makes it very difficult for me to be on time.”

ALLIES AND UNIONS

The LGBT and HIV-affected communities are themselves collections of allies — lesbian, gay, bisexual, transgender and HIV-affected people — who work together for common goals of civil rights. They advocate for each other’s rights, as well as their own. But LGBT people and people with HIV also need the support of individuals and organizations outside their communities. It is hard to achieve lasting changes in workplace conditions and laws without allies and supporters. In order to have the greatest impact, people need to work together and become allies in workplaces, unions and professional associations.

How can I be a workplace ally to LGBT people and people living with HIV?

There are many ways that you can be supportive of your LGBT and HIV-positive co-workers. A good first step is to recognize the individuality of all your co-workers and educate yourself about the forms of discrimination that your LGBT co-workers and co-workers with HIV face, as well as facts about

HIV infection. As an ally, you can take steps to change discriminatory practices and policies in your workplace and encourage others to be allies. One important way to do this is to “interrupt” homophobic, racist and sexist statements and actions. Similarly, don’t participate in or condone speculation or comments about co-workers’ sexual orientation, gender identity or HIV status. Look people in the eye and make simple statements such as “Please don’t use that language around me” or “I don’t agree with that.” If you do not feel comfortable interrupting certain behaviors as they are happening, you can talk to participants afterwards to tell them how you feel. For more ideas on how to take a stand for LGBT people and people living with HIV, check out our worksheet “Rate Yourself as a Workplace Ally” at the end of this kit.

Why is it important for my union to support LGBT people and people living with HIV in the workplace?

Unions are responsible for representing and advocating for their members and can be a powerful resource in fighting all kinds of workplace discrimination. Union collective bargaining agreements contain information about grievance procedures, the right to seek an arbitrator if you can’t reach a resolution and your right to receive assistance from a union representative.

When union fights are successful, they are particularly noteworthy because collective bargaining agreements are legally binding in ways that other kinds of employer policies and protections may not be. Unions can also make a compelling argument to employers with sites in multiple states, because a collective agreement standardizes employment protections for the entire bargaining unit, regardless of a state’s employment protection laws. A local union or chapter may also be

affiliated with a much larger state or international union that can pass member resolutions endorsing the rights and equality of LGBT people and those with HIV.

A union can support LGBT employees and those with HIV by fighting for an inclusive employee nondiscrimination clause, making equal benefits for LGBT people a primary battle during contract negotiations and demanding and enforcing transparent employment, disciplinary and termination practices that protect all workers. Unions can also be instrumental in shaping an employer's workplace diversity program. They can also support statutory protections for LGBT people and people living with HIV through union lobbyists; identify pro-LGBT, pro-union political candidates and help to block anti-LGBT candidates.

What steps can my union take to show support for LGBT people and people with HIV?

There are many ways your union can raise the visibility of LGBT and HIV issues internally. Your union can show respect for same-sex relationships by extending all union benefits (i.e., union pension plans) to same-sex partners and the families of same-sex couples and ensure that membership-assistance programs are sensitive to the issues and concerns of LGBT people and people with HIV. Your union can design and conduct inclusive diversity trainings for union staff and membership and provide a higher level of training for shop stewards and others handling grievances for LGBT and HIV-affected employees, as well as host or sponsor educational forums around LGBT and HIV issues. Your union can negotiate for nondiscrimination clauses, domestic partnership benefits and transgender-inclusive health insurance coverage. Your union can also

increase the visibility of LGBT people and people with HIV within the union by including stories and columns about LGBT and HIV issues in membership publications and websites and elevating LGBT people and people with HIV to leadership positions.

What if my union is not sympathetic to LGBT or HIV issues?

Like some employers, co-workers or governments, unions may not be receptive to the needs of their LGBT and HIV-affected members. The education process may be slow going and a little frustrating at times. Even if your union is doing nothing for LGBT workers specifically, you should make sure they are ensuring that employees are fired only "for cause" as this provides protection against discrimination. Bear in mind that unions can't discriminate against LGBT workers if the union is located in a city or state where LGBT employees are protected from discrimination. For example, if a union hiring hall won't give a construction worker an assignment because she is a lesbian, the worker may have grounds to file a discrimination complaint or a grievance under the procedure outlined in her collective bargaining agreement.

If your union leaders decline to help you with a workplace grievance or if they do so halfheartedly, you have the option of talking directly to an attorney about any discrimination you experience at work. You might also consider forming a caucus within your union to improve the outlook for LGBT and HIV-affected members in the future.



CHAPTER 3

WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION

Some federal, state or local laws prohibit discrimination based on sexual orientation, gender identity or expression or HIV status, but in many states there are few laws that provide such protections. In some circumstances, even where there is no specific antidiscrimination law, a company is legally responsible for the conduct of its supervisors and managers, and this may include being responsible for any discriminatory or harassing behavior. Even if your city, state or employer doesn't expressly prohibit discrimination based on sexual orientation or gender identity, when faced with discrimination, you should consider contacting Lambda Legal or a local attorney with experience in employment discrimination law to see if you have any other legal options.

IF YOU FACE DISCRIMINATION

The sections below provide details about the steps you can take if you feel that you have been discriminated against on the job. Some of the specific laws and procedures will vary

from state to state or from town to town, so it is important for you to contact an attorney, Lambda Legal's Help Desk or some other expert to learn about the particular options available in your case.

Here are some basic steps to take if you believe you have been discriminated against on the job:

- Collect evidence about the discriminatory conduct and a list of any witnesses.
- Always keep your favorable personnel reviews and any nonofficial commendatory remarks (such as congratulatory emails). You should do this at all times, because documentation of your good job performance can sometimes vanish from the company records once trouble begins.
- Obtain and read your employer's personnel policies and/or your union contract to learn about contractual rights and any complaint procedures.
- Consider any grievance procedures available to you through your employer and/or your union.
- If state or local laws apply to you, consider filing a complaint through your state or local civil rights enforcement agency; contact an attorney for advice or representation and be aware of any deadlines for filing complaints.
- With an attorney's assistance, consider whether any other legal actions in state or federal court can help to protect your rights.

Documenting and Reporting Discriminatory Treatment

Any investigation or later resolution of a complaint will often depend on proof of the actual conduct. Whether you witness discrimination or you are subjected to it yourself, always keep a written record. If a co-worker or a supervisor sexually harasses, abuses or discriminates against you in any way, write down your experience in a journal

or memo as soon as possible. After all, it is much more compelling to produce a detailed memo or journal entry that was written three months ago than it is to attempt to recall an occasion of discrimination that occurred three months ago.

If there is a legal claim, other people will be able to read what you wrote, so don't say anything that is inaccurate or that you wouldn't want others to read later. In your notes, include a chronology of events leading up to and fol-

IF YOU THINK YOU ARE EXPERIENCING DISCRIMINATION IN THE WORKPLACE, CONSIDER THE FOLLOWING QUESTIONS:

- ◆ What makes you think that you were treated differently because of your sexual orientation, gender identity or HIV status? What kind of evidence do you have?
- ◆ How were other LGBT or non-LGBT people or people with HIV treated in similar situations?
- ◆ How long have you worked for this employer? (The longer you've been at a job, the more credibility you may have.)
- ◆ How have your performance evaluations been? (It helps if you have a good record.)
- ◆ How do people at work know your sexual orientation, gender identity or HIV status? (Employers may claim that they couldn't be guilty of discrimination because they weren't aware of an employee's sexual orientation, HIV status or transgender identity.)
- ◆ Has your employer treated other LGBT or HIV-affected employees well? (If so, it may be harder to prove that the employer discriminated against you.)
- ◆ Has your employer treated other LGBT or HIV-affected employees badly or fired them? (If so, this might be seen as a "pattern" of discrimination and therefore help your case.)
- ◆ Have you complained to your supervisor or to a union or human resources representative? If so, what was the response?
- ◆ Does your employer have a nondiscrimination policy that includes sexual orientation, gender identity and health or HIV status?

FINDING AN ATTORNEY

Lambda Legal's Help Desks (www.lambdalegal.org/help or toll-free 866-542-8336) are a good resource if you think you are experiencing workplace discrimination because of sexual orientation, gender identity or HIV status. If Lambda Legal is not able to take your case, the Help Desk may be able to help you find an attorney in Lambda Legal's cooperating attorney network or elsewhere.

Some questions to keep in mind when interviewing prospective attorneys:

- ◆ Do they or their firm have experience with employment cases involving sexual orientation, gender identity or HIV status?
- ◆ Do they have any doubts about the equality rights of LGBT people and people with HIV?
- ◆ Do they know what kinds of arguments will be used against you in a case?
- ◆ For additional insights, see Lambda Legal's fact sheet "Some Suggested Questions to Ask a Prospective Attorney" available at www.lambdalegal.org.

lowing any problems you've had at work. List as many details as possible, including:

- The date, time, location, people involved and a description of what took place
- What was said, who said it, when and where it was said, who was in the room or vicinity or heard it
- Any different treatment (i.e., if straight employees were treated differently in a similar situation)
- Any procedures or policies that weren't followed
- Any witnesses
- Any reasons the employer gave for what happened
- Timing (for example, if problems seemed to start after you came out to your boss or co-workers)
- Copies or photographs of any offensive material
- Documentation of any attempts you or others made to address the situation (often

the best practice is to put such requests in writing and keep a copy)

You should keep this documentation at home, not in the workplace, and your records should also include a current copy of your employee manual or union contract and related emails, correspondence and other paperwork to the extent that company policies allow. You should also try to obtain a copy of your personnel file, including performance evaluations. (You are sometimes legally entitled to this material.) Obtaining a copy of this file early in the process prevents an unscrupulous employer from backdating negative documents and placing them in your file.

SOME FORMS OF DISCRIMINATION

Employment discrimination may occur at various points in the process of getting and



TAYLOR V. RICE

“Being HIV-positive has impacted my life in countless ways since I was diagnosed, but it has never kept me from being able to do a job. I’m still hopeful that I can be judged based on the skills and experiences I bring, along with my overall long-term health status, rather than just on whether I have HIV.”

— LORENZO TAYLOR

Lorenzo Taylor was denied employment by the U.S. Foreign Service because he has HIV. Taylor is fluent in three languages, holds a Foreign Service degree from Georgetown University and easily passed the rigorous application process required to be a Foreign Service Officer. Since 2003, Lambda Legal has represented Taylor in his efforts to seek justice in this case, which is now in the trial phase. We contend that the State Department’s policy barring all HIV-positive Foreign Service candidates violates the federal Rehabilitation Act. The Act prohibits the federal government from discriminating against

people with disabilities. Lambda Legal aims to change the State Department’s outdated policy by challenging it in court – and in the court of public opinion through a grassroots public education campaign.

LAMBDA LEGAL’S IMPACT

Lambda Legal’s discrimination complaint aims to end HIV discrimination in the U.S. Foreign Service once and for all. Under the current policy, the Department of State denies candidates for Foreign Service Specialist or Foreign Service Officer the individualized consideration they’re entitled to under federal antidiscrimination law.

keeping a job — and a person may experience more than one type of discrimination. Generally, employment discrimination may unfairly affect decisions about hiring, promotion, termination or may create a hostile workplace environment. Each of these types of discrimination is explained below.

Hiring and Promotion

Ideally, employers would hire or promote the person with the best qualifications for a job

without regard to personal characteristics unrelated to job performance. But this is not always the case.

You may believe you have been discriminated against in a hiring or promotion decision because one or more of the decision makers said derogatory or hostile things about LGBT people or people living with HIV, or because you observed others not known to be LGBT or living with HIV who were less qualified than you hired or promoted ahead of you. It is easier to prove a

claim of discrimination when someone has made explicitly discriminatory remarks or has demonstrated discriminatory attitudes (with posters or literature, for example, that denigrate LGBT people or people living with HIV). Hiring or promotion discrimination can sometimes be proved by detailed analysis of the qualifications of candidates and statistical analyses of the employer's

practices, but such cases may be difficult and complex.

Wrongful Termination

One of the most common types of employment discrimination cases Lambda Legal handles is wrongful termination of LGBT



DUNBAR V. FOOT LOCKER, INC.

“I am very pleased to have this over and to be able to move on with my life. The support I’ve gotten throughout this ordeal, sometimes from complete strangers, gave me confidence to persevere.”

— KEVIN DUNBAR

As an employee at Foot Locker (the athletic footwear and apparel chain), Kevin Dunbar suffered severe antigay harassment and discrimination at the hands of his co-workers, supervisors and a customer. Foot Locker promises a harassment-free workplace and includes sexual orientation in its policies on discrimination and harassment, but when Dunbar formally complained, the discrimination only intensified. Dunbar was transferred from one store location to another and eventually fired. In cooperation with the South Carolina Equality Coalition, Lambda Legal filed a lawsuit against Foot Locker on Dunbar’s behalf. Lambda Legal argued that Foot Locker breached its contract with Dunbar by violating its own antiharassment, antidiscrimina-

tion and open-door policies. A settlement agreement provided a monetary settlement for Dunbar, along with a commitment from Foot Locker to more vigorously train its managers and employees about antigay harassment and to provide information on support and services to handle such harassment.

LAMBDA LEGAL’S IMPACT

As a result of Dunbar’s case, Foot Locker employers nationwide will be trained in the dangers of antigay harassment and given resources to help combat it. Additionally, the case sent a message to employers in South Carolina and beyond that companies must take measures to enforce their own antiharassment and antidiscrimination policies.

employees or employees with HIV. In the recent past, we have won cases on behalf of athletes, food-industry workers and auto-glass specialists who were fired because their employers believed their HIV status made them dangerous to themselves or others on the job. We have also successfully represented a variety of people who were fired because of their sexual orientation.

Wrongful termination claims can also include circumstances where an employee is officially laid off or downsized but the employer unfairly singled the employee out for a discriminatory reason or used the layoff as a pretext for discrimination. Employers sometimes eliminate jobs or change job assignments because they are reducing the size of their workforce or reorganizing it. Such “layoffs” or “downsizing” are generally legal, even though they usually feel very unfair to the employees who lose their jobs. Sometimes an employer also uses a layoff unfairly to target an employee who would not otherwise lose his or her job. In other words, the employer does not have a real business reason for laying off the employee beyond discrimination on the basis of sexual orientation, gender identity or expression or HIV status. These actions can sometimes be challenged under the law.

Employers often have a great deal of latitude and discretion when it comes to terminating staff, and wrongful termination claims are often more subtle and complex than they appear on the surface. A wrongful termination claim may be complicated if an employee was terminated after encountering a pattern of harassment or abuse related to sexual orientation, gender identity or HIV status that made it difficult to perform the job effectively, or if the termination was in retaliation for complaining or speaking up about discrimination or harassing conduct.

Under the law, employers may not need to present compelling or rational reasons for terminating employees; even though their actions might be arbitrary or unfair, they might not be illegal. If you are laid off or fired, you will have a lot to think about. Your employer might offer you a severance package that provides more money to you but requires you to sign an agreement that you will not bring a legal complaint. Each person must consider the advantages and disadvantages of such an agreement — the advice of an attorney might be very helpful in deciding whether or not to accept such a severance agreement. If you believe you were fired or let go for a discriminatory reason, speak with an attorney familiar with employment law or call Lambda Legal’s Help Desk for more information.

A Hostile Workplace

People often assume that job discrimination is only related to hiring, promotion or firing, but other kinds of employment discrimination exist. Workplace discrimination against people because of their sexual orientation, gender identity or HIV status can also create a hostile work environment that effectively makes it impossible for an employee to do his or her job. Overt harassment and violence on the job are examples of such a hostile environment.

Employees also may suffer from their employer’s ignorance or disregard for the actual needs of lesbian, gay, bisexual, transgender and HIV-affected employees and their families. For example, while straight employees routinely wear a wedding ring, display pictures of their spouse and family and discuss their private life with co-workers (from dating to cultural activities to political involvement), when LGBT people do the same, some co-workers may complain that

IF YOU GET FIRED OR LAID OFF

- ◆ Ask your employer to put the reason you were terminated in writing.
- ◆ Obtain copies of your employment record, including evaluations and disciplinary actions.
- ◆ Study your employee manual's sections on employment termination. If your employer did not follow its own guidelines, you may be in a better position to contest or negotiate better terms for your termination.
- ◆ Consider reporting your termination to your union if you have one.
- ◆ If you are asked to sign any paperwork, carefully read it and consider consulting an attorney first because you may have fewer options later. For example, you may be asked to sign a severance agreement that includes a waiver of any future claims against your employer.
- ◆ Request a letter of reference. Try to negotiate about the information you do or do not want shared with prospective employers if they call.
- ◆ Ask about continuing health insurance coverage for yourself and your dependents under COBRA or other laws. If your partner or partner's legal children were covered under your insurance policy, their coverage often will end on your last day of work unless your employer has arranged for a different plan with the insurer.
- ◆ Collect statements of co-workers who may have witnessed discriminatory treatment against you and other LGBT or HIV-affected employees.
- ◆ Don't make angry accusations or threats, but you may want to send a professional letter of complaint to the company's human resources department, especially if you know the company has an equal employment opportunity officer or ombudsman. If you are considering a lawsuit, talk to an attorney first, as your statements can affect your claim.

these actions are inappropriate, offensive or contrary to their moral or religious views. Some employers may support a co-worker's complaint or institute restrictive policies. In the same vein, employers may deny transgender workers the right to use restrooms

corresponding to the gender they present because it may make some co-workers uncomfortable.

If your employer has an inclusive nondiscrimination policy, it is much easier to bring hostile conditions to someone's attention. But

if you feel isolated in your workplace, you may feel more limited about your options. You may need to begin by reaching out to co-workers who are offended by any cruelty even if they do not yet understand sexual orientation and gender identity issues. You may also wish to seek outside support to learn how and in what circumstances you can best stand up for yourself when the need arises.

Sexual Harassment

Sexual harassment always involves unwanted or unwelcome sexual behavior. In its most obvious form, it occurs when an employee is required to provide sexual favors as a condition of employment, compensation or job advancement. It can also include being subjected to sexual words or conduct that interfere with a reasonable employee's ability to do his or her job, particularly when the behavior is persistent and grossly offensive. Inappropriate invitations, unwanted touching, sexually explicit gestures, pornographic pictures, sexist jokes and sexual overtones may constitute sexual harassment. The laws prohibiting sexual harassment apply equally to behavior between individuals of the same or different sexes.

If you are the victim of sexual harassment on the job, you have options: If you feel safe enough to do so, you can choose to confront the harasser and ask him or her to stop the behavior. It can be helpful to report any incidents of sexual harassment to your immediate supervisor or to the human resources department and/or your union representative, and to document the harassment and any steps you take to address it. Your employer needs to be aware of the harassment in order to take action. Most workplaces have a sexual harassment policy that explains how to make a complaint. If your supervisor is the harasser, report

the behavior to the next appropriate manager or to the human resources department and/or your union representative. As with other forms of harassment and discrimination, copy and maintain a record of any complaint you make.

If you cannot reconcile the problem at your workplace, you may want to file a complaint with the U.S. Equal Employment Opportunity Commission (www.eeoc.gov) and/or with your state's fair employment practices agency, if one exists.

Gender-nonconforming Conduct or Appearance

Sometimes employees face discrimination because of gender-nonconforming conduct or appearance or the perception by others that they do not fit within cultural norms for males and females. For example, employees may face discriminatory actions or a hostile work environment when supervisors or co-workers believe a male acts or looks effeminate or a female acts or looks masculine. Transgender employees often face this type of discrimination. Lambda Legal believes employees should be judged on their work performance and not be required to fit within other people's gender stereotypes. In some cases, employees who face this type of discrimination can seek a remedy under laws and policies prohibiting discrimination on the basis of sex or sexual orientation.

OTHER IMPORTANT JOB RIGHTS

Violations of Privacy

Earlier in this kit, we discussed privacy and confidentiality laws that protect employees with HIV (pages 23-25) and highlighted some of the inappropriate questions that

prospective employers are not allowed to ask during interviews or as part of the application process (page 15). In addition, federal legislation like the 1988 Employee Polygraph Protection Act severely limits an employer's ability to use polygraph equipment on employees. But there has been a trend toward less privacy in the workplace. Some employers routinely monitor employee telephone calls, emails and Internet usage. Some conduct video surveillance of employees (even in locker rooms or restrooms) and review computer files. Some employers review their employees' computer files, and even conduct physical searches as well as searches of their offices and possessions.

As part of their work, human resources personnel review and maintain current employee records detailing benefits, Social Security and family information. However, employers can also easily access additional confidential employment, financial and medical records about their employees from computer databases. Employees may also be asked to take written "personality" tests that question them about very personal matters, including sexual orientation. Some of these tests may violate the law. The absence of laws on workplace privacy means that unscrupulous employers and unethical individuals can collect and use this information for inappropriate reasons as well.

Employees with HIV also often experience ostracism and invasions of privacy because of ignorance about HIV. For disclosures made outside of the protections of the Americans With Disabilities Act (i.e., disclosure outside of the hiring or reasonable accommodation process), your state's HIV confidentiality law may not require that all employees at your job keep all information about your HIV status confidential, so be very careful about disclosure.

Honoring Religious Freedom and Workplace Diversity

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of religion. This means that all employees, including LGBT people and people living with HIV, are free to hold religious views without interference from their employers. However, it does not mean that people in the workplace may freely express hostile or discriminatory views that affect the working conditions of others. In 2004 one appeals court ruled that an employee disciplined for posting Biblical passages condemning homosexuality in his cubicle did not have a religious discrimination claim; that is to say, accommodating his views would create undue hardship on his employer's efforts to create a diverse, nondiscriminatory workplace. In 2004 the same court also rejected a religious discrimination claim brought by a Christian fundamentalist supervisor who was fired after inappropriately expressing her religiously based disapproval of her subordinate's sexual orientation.

If you experience religiously-motivated harassment in the workplace, you may be able to file a complaint if your employer has a nondiscrimination policy that covers sexual orientation, gender identity and HIV status. If your employer encounters resistance from employees who claim that the employer's action violates their religious beliefs, please contact Lambda Legal or suggest us as a resource to your employer.

The false dichotomy between religious rights and other forms of diversity rights is only one of many emerging workplace issues facing the LGBT and HIV-affected communities. Although this kit seeks to

inform you on as many topics as possible,
you are encouraged to keep updated
by visiting Lambda Legal's website at
www.lambdalegal.org.

RESOURCE GUIDE



NATIONAL RESOURCES

Lambda Legal

National Headquarters
120 Wall Street, Suite 1500
New York, NY 10005
tel 212-809-8585
fax 212-809-0055
www.lambdalegal.org

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

American Civil Liberties Union – Lesbian and Gay Rights and HIV/AIDS Projects

125 Broad Street, 18th Floor
New York, NY 10004
www.aclu.org
tel 212-549-2627

The goal of the ACLU Lesbian and Gay Rights Project is equal treatment and equal dignity for lesbian, gay, bisexual and transgender people. That means evenhanded treatment by the government, protection from discrimination in jobs, housing, hotels, restaurants and other public places, and fair and equal treatment for lesbian and gay couples and families. The ACLU website provides online resources about privacy in the workplace, including a twelve-minute video entitled *Through the Keyhole*.

Gay & Lesbian Advocates & Defenders (GLAD)

30 Winter Street, Suite 800
Boston, MA 02108
tel 617-426-1350
www.glad.org
gladlaw@glad.org

Founded in 1978, GLAD is New England's

leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Providing litigation, advocacy and educational work in all areas of gay, lesbian, bisexual, transgender civil rights and the rights of people living with HIV, GLAD has a full-time legal staff and a network of cooperating attorneys across New England

Gay and Lesbian National Hotline

2261 Market Street
San Francisco, CA 94114
tel 888-415-3022 (administrative)
fax 415-552-5498
Hotline: 888-THE-GLNH (888-843-4564)
www.glnh.org
glnh@glnh.org

GLNH is a nonprofit organization that provides nationwide, free and confidential telephone and email peer counseling, information and local resources. GLNH is open Monday through Friday 4:00 p.m. – 12:00 a.m. and Saturday 12:00 – 5:00 p.m. EST. The Gay & Lesbian Switchboard of NY Project can be reached at 212-989-0999, Monday through Friday 4:00 – 8:00 p.m. EST, and Saturday 12:00 – 5:00 p.m. EST. The San Francisco office can be reached at 415-355-0999, Monday through Friday 5:00 – 9:00 p.m. PST.

Gender Public Advocacy Coalition (GenderPAC)

1743 Connecticut Avenue, NW
4th Floor
Washington, DC 20009-1108
tel 202-462-6610
fax 202-462-6744
www.gpac.org
gpac@gpac.org

The Gender Public Advocacy Coalition works to ensure that every American can par-

ticipate in the workplace, the classroom and the community regardless of whether they meet ideals for masculinity or femininity. GenderPAC's Workplace Fairness Program works to end discrimination and violence caused by gender stereotypes by changing public attitudes, educating elected officials and expanding legal rights. Specifically, the program supports major corporations in adding gender identity/expression protections to their EEO policies, as well as provides important support for lawsuits in the federal and state appellate courts that can expand legal rights.

Human Rights Campaign

1640 Rhode Island Avenue NW
Washington, DC 20036-3278
tel 202-628-4160
fax 202-347-5323
TTY 202-216-1572
toll free 800-727-4723
www.hrc.org
HRCWorkNet@hrc.org

The Human Rights Campaign seeks to improve the lives of GLBT Americans by advocating for equal rights and benefits in the workplace, ensuring families are treated equally under the law and increasing public support among all Americans through innovative advocacy, education and outreach programs. HRC's WorkNet (www.hrc.org/worknet) is a national source of information on workplace policies and laws surrounding sexual orientation and gender identity. It includes extensive resource listings, a bibliography and the Corporate Equality Index, which gathers pertinent information about large corporations.

The Legal Aid Society-Employment Law Center

600 Harrison Street, Suite 120
San Francisco, CA 94107
tel 415-864-8848
fax 415-864-8199
www.las-elc.org
info@las-elc.org

The LAS-ELC operates nationally and on state and local levels, and litigates cases that may reform laws and policies for the benefit of minority and low-income workers and their families. The LAS-ELC also conducts workshops, publishes educational materials and provides technical assistance to disadvantaged workers and their advocates. Some of their online resources include "The LGBT Employment Project" and "Transgender Worker's Rights."

National Association of LGBT Community Centers

1325 Massachusetts Avenue NW, Suite 600
Washington, D.C. 20005
tel 202-824-0450
fax 202-393-2241
www.lgbtcenters.org

The National Association of LGBT Community Centers exists to support and enhance lesbian, gay, bisexual and transgender community centers. The Association offers technical assistance, leadership training and networking opportunities to centers in all stages of formation, and is a national voice for the LGBT community centers movement. Their website includes a nationwide directory of LGBT centers, as well as a number of other informative resources.

National Center for Lesbian Rights

National Office
870 Market Street, Suite 370
San Francisco, CA 94102
tel 415-392-6257
fax 415-392-8442

NCLR is a progressive, feminist, multicultural legal center with a primary commitment to advancing the rights and safety of lesbian, gay, bisexual, and transgender people and their families through a program of litigation, public policy advocacy and public education. NCLR litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the LGBT community, provides free legal information to clients and their legal advocates and conducts community education on LGBT legal issues. Visit NCLR's website to view their online publications, including: *Gender Identity Discrimination and Employment Law*, *Legalizing Your Gender Identity* and *Transgender Equality: A Handbook for Activists and Policymakers*.

National Gay and Lesbian Task Force

1325 Massachusetts Avenue NW, Suite 600
Washington, DC 20005
tel 202-393-5177
fax 202-393-2241
TTY 202-393-2284
www.thetaskforce.org
ngltf@ngltf.org

NGLTF is the national progressive organization that works to build the grassroots political power of the LGBT community to win complete equality. The NGLTF website provides information on a variety of LGBT-related issues, including civil rights and domestic partnership. "The Domestic Partnership Organizing Manual for Employment Benefits" by Sally Kohn, is a comprehensive resource that can be downloaded at www.ngltf.org/library/dp_pub.htm.

National LGBT Chamber of Commerce

Dupont Circle
2000 P Street NW, Suite 300
Washington, D.C. 20036
tel 202-419-0440
fax 202-419-0442
www.nglcc.org
info@nglcc.org

NGLCC is specifically dedicated to expanding the economic opportunities and advancements of the LGBT business community. As a national umbrella organization, the NGLCC is the premier advocate on behalf of LGBT owned businesses, professionals, students of business, and corporations that share in our desire to expand the community's financial opportunities, economic growth, continued innovation, and equality. The NGLCC website includes a nation-wide directory of LGBT-owned and -friendly businesses.

Pride at Work/AFL-CIO

National Headquarters
815 16th Street NW
Washington, DC 20006
tel 202-637-5085
fax 202-508-6923
www.prideatwork.org

National Pride at Work is the newest constituency group of the AFL-CIO (American Federation of Labor & Congress of Industrial Organizations). The purpose of Pride at Work is to mobilize mutual support between the organized Labor Movement and the LGBT Community around organizing for social and economic justice. For more information see Pride at Work's online publications *Domestic Partner Benefits*, *Worker's Rights* and *Transgender Issues*.

United States Equal Employment Opportunity Commission

Headquarters:

1801 L Street NW

Washington, D.C. 20507

tel 202-663-4900

TTY 202-663-4494

To be connected to a regional field office:

tel 800-669-4000

TTY 800-669-6820

www.eeoc.gov

The EEOC was established by Title VII of the Civil Rights Act of 1964 to handle complaints of employment discrimination and sexual harassment. The EEOC enforces job discrimination laws and provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies. The EEOC website includes phone numbers and addresses for all of its regional offices. Contact the EEOC for information and instruction about filing a complaint.

TRANSGENDER SPECIFIC RESOURCES

Center for Gender Sanity

PO Box 30313

Bellingham, WA 98228

tel 360-398-2878

www.gendersanity.com

Director@gendersanity.com

The Center's "Transitions That Work" program is a consulting service for transsexuals who plan to transition on the job, their co-workers and their employers. "Transitions That Work" offers help in planning a successful transition, guidance for employers dealing with transition issues and diversity training about transsexualism.

National Center for Transgender Equality

1325 Massachusetts Avenue, Suite 700

Washington, DC 20005

tel 202-903-0112

fax 202-393-2241

www.nctequality.org

NCTE@NCTEquality.org

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. By empowering transgender people and our allies to educate and influence policymakers and others, NCTE facilitates a strong and clear voice for transgender equality in our nation's capital and around the country.

Sylvia Rivera Law Project

322 8th Avenue, 3rd Floor

New York, NY 10001

tel 212-337-8550

fax 212-337-1972

www.srlp.org

The Sylvia Rivera Law Project works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence. SRLP works to improve access to respectful and affirming social, health, and legal services for our communities.

Transgender Law and Policy Institute

www.transgenderlaw.org

info@transgenderlaw.org

The TLPI is a nonprofit organization that advocates for transgender people by tracking legal and public policy developments and providing online resources to attorneys working on behalf of transgender people.

Their website offers a variety of resources, including *A Plan for Transition on the Job* and *Help for Employers with Transgender Workers*.

Transgender Law & Policy Institute

1800 Market Street, Suite 408
San Francisco, CA 94102
tel 415-865-5619
tel 415-392-6257, ext. 308
www.transgenderlawcenter.org
info@transgenderlawcenter.org

The Transgender Law Center (TLC) is a nonprofit organization dedicated to engaging in effective advocacy for transgender people. The TLC brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality. Their website includes information on their current projects, as well as a list of nondiscrimination laws.

Transgender at Work

www.tgender.net/taw
mah@mhorton.net

The Transgender at Work project provides resources for innovative employers who want to implement company employment policies that will help transgender employees be at their most productive, and offers advice to those thinking of transitioning in the workplace. Their website also lists contact information for educators who may be able to offer workplace presentations.

WORKPLACE EDUCATION AND INFORMATION

Common Ground

tel 303-941-2991
www.common-grnd.com
LWinfeld@common-grnd.com

Common Ground is an education and consulting firm focused on workforce diversity education. Common Ground offers workplace sexual orientation education programs and consulting on employee policies, particularly domestic partner benefits policies.

Out & Equal

155 Sansome Street, Suite 450
San Francisco, CA 94104
tel 415-694-6500
fax 415-694-6530
www.outandqual.org
info@outandequal.org

Out & Equal is a national nonprofit organization devoted to the lesbian, gay, bisexual and transgender community in workplace settings. In addition to providing diversity-training services, Out & Equal holds an annual Workplace Summit focused on educating human resources professionals and developing employee resource group leadership. Their website includes 15 steps to an out and equal workplace.

ON THE WEB

Gay.com

www.gay.com

Business and Careers section of this site addresses issues gays face in the workplace. Users can also search the Corporate Pride Directory (co-sponsored by HRC) and use the job search engine.

Gay Financial Network

www.gfn.com

Walter B. Schubert, the first openly gay member of the New York Stock Exchange, founded GFN to provide business and investing information to gays and lesbians. The site also includes news headlines and a career search directory.

The Body

www.thebody.com

The Body is a website devoted to providing information about HIV/AIDS treatment and policies.

WORKSHEETS



RATE YOURSELF AS A WORKPLACE ALLY

Which of the following supportive actions have you already taken, and where do you need to improve as an ally? After answering these questions, identify one to three ways you plan to be a more vocal and supportive workplace ally in the coming year.

SUPPORTIVE ACTIONS	YES	NEEDS IMPROVEMENT
I have educated myself about the forms of social, political, legal and economic discrimination that LGBT people and people living with HIV face every day.	<input type="radio"/>	<input type="radio"/>
I try to use gender-neutral terms such as “partner” or “spouse.”	<input type="radio"/>	<input type="radio"/>
I respectfully ask transgender co-workers which pronoun they prefer.	<input type="radio"/>	<input type="radio"/>
I interrupt homophobic and transphobic remarks and actions by making simple statements such as “Please don’t use that language around me,” “I find that disrespectful” or “I don’t agree with that.”	<input type="radio"/>	<input type="radio"/>
I speak up proactively for LGBT and HIV rights in the workplace.	<input type="radio"/>	<input type="radio"/>
I try to be a supportive witness. If I see discrimination or harassment occurring in my workplace, I document and protest it.	<input type="radio"/>	<input type="radio"/>
I encourage my employer and union to present workplace diversity workshops on sexual orientation, gender identity or expression and HIV.	<input type="radio"/>	<input type="radio"/>
I support LGBT co-workers’ right to form an employee resource group.	<input type="radio"/>	<input type="radio"/>
I support the right of differently abled co-workers to obtain reasonable accommodations. I do not complain that a co-worker is getting “special treatment” for an accommodation that is allowing them to work.	<input type="radio"/>	<input type="radio"/>
I am familiar with employee policies at my workplace and the mechanisms for changing them.	<input type="radio"/>	<input type="radio"/>
I welcome the partners, dates and families of LGBT people to all social events (company picnics, holiday parties, etc).	<input type="radio"/>	<input type="radio"/>
I actively advocate for change by fighting for the rights of LGBT co-workers and co-workers living with HIV at my workplace.	<input type="radio"/>	<input type="radio"/>
I actively advocate for change by fighting for the rights of LGBT co-workers and co-workers living with HIV on the city, state and federal level.	<input type="radio"/>	<input type="radio"/>

IS THIS AN LGBT- AND HIV-FRIENDLY WORKPLACE?

EVALUATING YOUR CURRENT OR PROSPECTIVE EMPLOYER

There are many factors to consider in determining if a workplace is right for you. Use this list of questions to assess your current workplace, or to evaluate a prospective employer. Not all of these factors will be of equal importance to everyone, so feel free to rank them according to what matters most to you.

The following sources can be used to gather information about an employer. Use the methods with which you feel the most comfortable. If you are applying for a job, you might want to wait to ask more probing questions, or those that reveal you as a lesbian, gay man, bisexual, transgender person or as a person living with HIV, until after you are offered the position.

- > job announcements
- > company website
- > human resources department
- > employee resource group
- > policy handbook
- > current and past employees
- > your own impressions
- > internet searches
- > annual reports
- > LGBT professional assoc.
- > interview
- > HRC's website
(www.hrc.org/placestowork)

Note: If you are considering taking a job in a new state or city, you may first want to find out what employment laws exist in that area. (See the worksheet Tracking State and Local Laws & Policies.)

NAME OF EMPLOYER OR PROSPECTIVE EMPLOYER

POLICIES:	YES	NO	N/A
Is there a nondiscrimination statement or policy that includes sexual orientation?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is there a nondiscrimination statement or policy that includes gender identity?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is there a nondiscrimination statement or policy that includes people living with HIV?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Does the employer provide equal health benefits for family members of employees with same-sex partners?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do benefits that are made available to married employees — such as parental leave, bereavement leave and relocation benefits — also apply to employees with same-sex partners?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

PRACTICES:	YES	NO	N/A
Does the employer regularly train managers and supervisors about how to carry out the nondiscrimination policies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is the training for managers mandatory?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do employees receive diversity, sensitivity or other training that includes information about preventing discrimination of lesbian, gay, bisexual and transgender people?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is the diversity/sensitivity/other training for employees mandatory?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Does the employer readily make reasonable accommodations for people with disabilities, including people living with HIV?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is there an active LGBT employee resource group?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Does the employer have any gender-neutral restrooms available for employees and/or clients?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Has the employer participated in any social or political activities in support of the LGBT community or LGBT and HIV rights? (i.e., sponsored Prides, marches, rallies, walks, endorsed legislation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do they make charitable donations to LGBT or HIV organizations and/or causes?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do they make charitable donations to anti-LGBT organizations and/or causes?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
OVERALL IMPRESSION:	YES	NO	N/A
Are you generally comfortable walking through the workplace and interacting with employees?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is the staff diverse in other ways (e.g. women and people of color well-represented)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are supervisors and managers comfortable answering questions about their policies and practices?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

DOCUMENTING HARASSMENT AND DISCRIMINATION

INCIDENT SHEET

Use this sheet to keep a written record of any instances of discrimination, whether you are subjected to it yourself or are a witness. Make a copy of this sheet and write down your experience as soon as possible. If there is a legal claim, other people will be able to read what you wrote, so don't say anything that is inaccurate or that you wouldn't want others to read later.

Keep all of your Incident Sheets and supporting documentation in a safe place away from your workplace.

DATE AND TIME OF INCIDENT

LOCATION

PEOPLE INVOLVED:

NAME

POSITION

NAME

POSITION

NAME

POSITION

In your own words, write a description of what took place, including:

- What was said, who said it, when and where it was said, who was in the room or vicinity or heard it
- Any different treatment (i.e., if heterosexual employees were treated differently in a similar situation)
- Any procedures or policies that weren't followed
- Any reasons the employer gave for what happened
- Timing (for example, if problems seemed to start after you came out to your boss or co-workers)

(Attach additional sheets, if needed.)

SIGNATURE

DATE COMPLETED

WITNESSES:

NAME	POSITION
------	----------

HOME ADDRESS

HOME PHONE

CELL PHONE

NAME

POSITION

HOME ADDRESS

HOME PHONE

CELL PHONE

NAME

POSITION

HOME ADDRESS

HOME PHONE

CELL PHONE

What attempts have you or others made to address the situation and when did these attempts take place?

Attach supporting documentation, including:

- Copies or photographs of any offensive material
- Statements of co-workers who may have witnessed discriminatory treatment against you and other LGBT or HIV-affected employees
- Copies of any correspondence you sent to your employer to notify them of the incident or ask them to take corrective action
- Copies of any responses from your employer
- Copies of any relevant employment policies
- If you are fired, documentation from your employer stating the reason you were fired
- Copies of your employment record, including evaluations and disciplinary actions
- Copies of any paperwork you are asked to sign such as a severance agreement

TRACKING STATE AND LOCAL LAWS & POLICIES

There is no federal law that expressly forbids workplace discrimination against lesbian, gay, bisexual and transgender people, and state and local protections vary greatly. Follow these four steps to research and record the protections that do exist where you work.

STEP 1
ARE THERE STATEWIDE NONDISCRIMINATION LAWS? Some states have banned discrimination based on sexual orientation and gender identity for public sector (state) employees. More than one third of all states specifically ban workplace discrimination in the private sector based on sexual orientation. And only a handful of states ban discrimination based on gender identity in the private sector.

FIND OUT IF YOUR STATE HAS PUBLIC AND/OR PRIVATE SECTOR EMPLOYMENT PROTECTIONS BY USING THE "IN YOUR STATE" FEATURE ON LAMBDA LEGAL'S WEBSITE AT WWW.LAMBDALLEGAL.ORG/OUR-WORK/STATES.

STEP 2
ARE THERE CITY AND COUNTY NONDISCRIMINATION LAWS AND/OR EQUAL BENEFITS POLICIES? A growing number of city and local governments have enacted additional policies and laws to provide protections for LGBT employees. Some cities and counties have passed laws that ban discrimination based on sexual orientation and gender identity. In some cases, local government entities have made equal health benefits available to domestic partners of all public employees. A smaller number of municipal governments have passed equal benefits ordinances requiring contractors to offer equal health insurance benefits to the domestic partners of their employees.

FIND OUT IF THERE ARE CITY AND/OR COUNTY PROTECTIONS WHERE YOU LIVE AND WORK BY USING THE HUMAN RIGHTS CAMPAIGN'S COUNTY AND CITY INTERACTIVE SEARCH TOOL IN THE "WORKPLACE" SECTION OF HRC'S WEBSITE AT WWW.HRC.ORG

STEP 3
ARE THERE STATE-SPECIFIC HIV LAWS? Many states have laws that regulate who must be notified about HIV/AIDS cases and how the privacy of people living with HIV must be protected.

TO FIND OUT WHAT LAWS IN YOUR STATE MAY IMPACT CONFIDENTIALITY AND PRIVACY IN THE WORKPLACE FOR PEOPLE LIVING WITH HIV, ENTER YOUR STATE OR CITY'S NAME AND "HEALTH DEPARTMENT" IN YOUR INTERNET SEARCH ENGINE. THE WEBSITE WWW.FINDLAW.COM ALSO HAS INFORMATION IN ITS STATE LAWS SECTION.

STEP 4
WHAT LAWS HAVE BEEN PROPOSED? There may be efforts to enact laws or policies in your state, county or city related to workplace rights.

TO LEARN ABOUT PENDING LEGISLATION OR POLICIES, CONTACT YOUR LGBT STATE ADVOCACY ORGANIZATION (WWW.EQUALITYFEDERATION.ORG) TO LEARN ABOUT PENDING EMPLOYMENT LEGISLATION AND ACTIVISM IN YOUR REGION.

MY STATE:

YES

NO

bans workplace discrimination of public employees based on sexual orientation

bans workplace discrimination of public employees based on gender identity

bans workplace discrimination of private employees based on sexual orientation

bans workplace discrimination of private employees based on gender identity

makes equal health benefits available to domestic partners of public employees

regulates HIV/AIDS notification or confidentiality of people living with HIV that could relate to the workplace

If Yes, describe:

has pending laws or policies regarding workplace equality

If Yes, describe:

What group(s) are advocating for these laws?

MY COUNTY/CITY

YES

NO

bans workplace discrimination of public employees based on sexual orientation

bans workplace discrimination of public employees based on gender identity

makes equal health benefits available to domestic partners of public employees

has an equal benefits ordinance

regulates HIV/AIDS notification or confidentiality of people living with HIV that could relate to the workplace

If Yes, describe:

has pending laws or policies regarding workplace equality

If Yes, describe:

What group(s) are advocating for these laws?



Lambda Legal is a national organization committed to achieving full recognition of the rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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